death. It is settled law now that a statutory tenancy, which is the creation of the Rent Act, is a purely personal right and that such right ceases with and on the death of the statutory tenant, unless the provisions of section 16 of the Rent Act become applicable. In this case it was common ground that neither Chua nor any member of his family stayed or lived in the premises or any part thereof either before or after his death. The answer here, perforce, was that the statutory tenancy of Chua came to an end with his death and anyone found living or otherwise on the premises is a trespasser and liable to eviction at the will of the plaintiff and this too is settled law.

Issue 6 — As between Chua and the 5th defendant, namely MYMCA, did Chua hold the tenancy of the premises in trust for MYMCA.

On this issue the defendants adduced no credible or acceptable evidence. A document styling itself "This Deed of Acknowledgement of Trust and Vesting Deed" made September 7, 1973 (AB56) was part of the Agreed Bundle. This was intended to show that Chua in the year 1948 acquired the tenancy of the premises as a nominee and on behalf of the organisation known as the Chinese Young Men's Christian Association (CYMCA) on the payment to Ang Hai San of $40,000 by the CYMCA (See Recital 1 of AB56). This was clearly not in keeping with the testimony given in court, which was that the CYMCA only came into the picture after the dissolution of the Mayfair Musical & Dramatic Association had been dissolved by the Government sometime in 1951 for subversive activities. A letter dated August 21, 1973 (AB55) written by Chua to the plaintiff's solicitors in terms similar to those as in the said Recital 1 was also relied upon by the defendants. I attached no weight or importance to AB56 and AB55 as both AB56 was executed some 4 weeks after the Notice to Quit and AB55 was written by Chua in response to the Notice to Quit served on him. I was even less impressed when both the documents talk of $40,000 being paid to the predecessor-in-title to the plaintiff by the CYMCA for the tenancy of the premises. I find it somewhat difficult to believe that the CYMCA, which came into being in 1947, thought it worth its while to pay $40,000 for the privilege of someone else running a Teachers' Rest House. After careful consideration of all the evidence adduced I was of the view that, as between Chua and the MYMCA, he did not hold the tenancy of the premises in trust for the MYMCA. There was very possibly some talk in July/August 1968 between Chua and CYMCA about the premises being held in trust for the latter but nothing came of it. I was satisfied that Ang Hai San was not involved in these talks, but I was somewhat puzzled as to why the draft of the proposed trust deed (AB35-7) should speak of Chua and not the CYMCA having paid the $40,000 to Ang Hai San. I was also satisfied on the evidence before me the plaintiff had no knowledge of any trust in regard to the premises as between Chua and the 5th defendant. Indeed he could not have known of any such trust as in my view the trust was sought to be brought into effect only after the Notice to Quit had been served on Chua.

I accordingly gave judgment for the plaintiff. Damages was allowed at $371.05 per month from December 1, 1974 to date of possession. Possession of the land and premises to be given on or before September 30, 1980. Costs of these proceedings to the plaintiff to be taxed.

Claim allowed.

Solicitors: *G. Murugaiyan; Braddell Brothers.*

WONG KIM SANG & ANOR. v. ATTORNEY-GENERAL

[O.C.J. (Kulasekaram J.) January 7, 1982]
[Singapore — Suit No. 3452 of 1978]

Administrative Law — Police Force — Dismissal of subordinate police officers — Disciplinary charges made against them — Committee of Inquiry found that charges not proved — Subsequent dismissal by Public Service Commission — Whether wrongfully dismissed — Rights under Malaysian Constitution, art. 135(2) — Police Force Act (Cap. 78), ss. 27 & 28A — Public Service (Disciplinary Proceedings) Regulations 1970, regs. 3 & 4.

Police Force — Subordinate police officers — Dismissal by Public Service Commission — Whether wrongful — Malaysian Constitution, art. 135(2) — Police Force Act (Cap. 78), ss. 27 & 28A — Public Service (Disciplinary Proceedings) Regulations 1970, regs. 3 & 4.

The facts of this case were briefly as follows. The first plaintiff was a Detective Police Sergeant in the Police Force and was attached to the Gambling Suppression Branch of the Criminal Investigation Department of the said Force. The second plaintiff was a Detective Police Constable, also attached to the Gambling Suppression Branch of the Criminal Investigation Department. On March 5, 1977 the two plaintiffs conducted a raid on No. 46B Holy Innocents Lane, Singapore. The premises was occupied by Madam Chia with her son Lee Boon Keng and his family. During raid betting slips were found on the premises. Chia Yak Moy, an adopted son of Madam Chia, was arrested and taken to the Police Station. The next day he was taken court where he pleaded guilty to a charge of being in possession of betting slips and was fined. By a letter dated January 13, 1978, the first plaintiff was informed that disciplinary proceedings under regulation 4 of the Public Service (Disciplinary Proceedings) Regulation 1970 (the Regulations) had been commenced against him on two charges, i.e. conniving with the second plaintiff in "demanding and accepting a gratification of $1,200 from a member of the public, one Chia Yak Moy, as an inducement for not taking action against one Lee Boon Keng under the Common Gaming Houses Act (Cap. 96)" and for perverting "the proper administration of justice by putting one Chia Yak Moy under arrest and subsequently charging him for an offence under the Common Gaming Houses Act when (he) knew that the real culprit was one Lee Boon Keng." The second plaintiff too received a similar letter dated January 13, 1978 almost on identical terms informing him that disciplinary proceedings had also been commenced against him on the corresponding two charges.

Both plaintiffs submitted their exculpatory statement by letters dated January 19, 1978 wherein they denied the said two charges. The Public Service Commission (PSC) were not satisfied with these exculpatory statements of the two plaintiffs and they appointed a Committee of Inquiry under Regulation 4(3) of the Regulations. The Committee in their report stated both the charges against the two plaintiffs had not been proved.

The first plaintiff received a letter dated August 15, 1978 from the Permanent Secretary (Home Affairs) that the PSC after careful consideration of the facts of the case and the report of the Committee had decided that he be dismissed and he was thereby dismissed from the service with effect from the date following the receipt of the letter by him. A similar letter was also received by the second plaintiff on August 18, 1978.

As the two letters of August 15, 1978 addressed to the two plaintiffs did not mention on which of the two charges that had been preferred against them that they had each had been found guilty, counsel for the plaintiffs wrote to the Permanent Secretary (Home Affairs) on September 5, 1978 for clarification on this point. The Permanent Secretary (Home Affairs) by letter of September 15, 1978 informed that they were found guilty of the first charge.

Counsel for the plaintiffs submitted that the PSC had no powers to differ from the findings of the Committee which had found them not guilty on both the charges that had been preferred against each of the two plaintiffs. It was also contended that the PSC had disregarded the rights of the plaintiffs under article 135(2) of the Malaysian Constitution, and had acted in violation of those rights.

Held, dismissing the plaintiffs' action: (1) if the Committee in its report makes any finding as to the guilt or otherwise on the charge preferred against the subordinate officer concerned, it is purely expressing its opinion and no more, and it is best a matter which may be taken into consideration by the PSC and is by no means binding on the PSC; In this case, the PSC were perfectly entitled to differ from the views of the Committee on the question of whether the officers concerned were guilty on the charge or not;

(2) the jurisdiction over inferior tribunals is supervision and not review. Its supervision would be to ensure that the inferior tribunal acts within the jurisdiction permitted by Parliament in its mandate to the tribunal. If the tribunal on a true construction of the Police Force Act is to inquire into and finally decide questions within a certain area, the court's supervisory function is to see that it makes the authorised inquiry according to natural justice and arrives at a decision whether right or wrong;

(3) the PSC were not bound by the procedure set out in section 27 of the Police Force Act and the Police Regulation but by the procedure set out in the Public Service (Disciplinary Proceedings) Regulation 1970;

(4) while article 135(2) of the Malaysian Constitution applied to all members of the Police Force, the new article 78(3) provided by the Constitution (Amendment) Act 1970 was applicable only to police officers of the rank of Inspector and above. The clear implication is that art 135(2) has been repealed impliedly and such a provision is no longer applicable to subordinate police officers like the plaintiffs.

Case referred to:-

(1) *V.C. Jacob* v. *The Attorney-General* [1970] 2 M.L.J. 133.

CIVIL SUIT.

J.B. Jeyaretnam for the plaintiffs.

Chao Hick Tin (Senior State Counsel) for the defendant.

Cur. Adv. Vult.

Kulasekaram J.: The plaintiffs in this action seek three declarations on different grounds each to the ultimate effect that their dismissal from the Singapore Police Force (the said Force) was illegal, void and inoperative, and in the alternative, they claim damages for wrongful dismissal.

The facts and circumstances leading to the two plaintiffs' dismissal from the said Force are as follows.

The first plaintiff joined the said Force in or about March 12, 1963 as a Detective Police Constable and was promoted to the rank of Detective Police Corporal in March 1964 and to the rank of Detective Police Sergeant in October 1974 and was at all material times holding this rank in the said Force and was attached to the Gambling Suppression Branch of the Criminal Investigation Department of the said Force.

The second plaintiff joined the said Force as a recruit on August 12, 1963 and was appointed, on three years' probation, as a Police Constable with effect from August 13, 1963 and was promoted to the rank of Detective Police Constable on September 15, 1971. At all material times he, as a Detective Police Constable, was also attached to the Gambling Suppression Branch of the C.I.D. of the said Force.

At all material times the plaintiffs' service with the said Force were subject to and governed by the Police Force Act (the Act) (Cap. 78), the Police Regulations, Police General Orders, Standing Orders, Force Orders made under the Act and Instruction Manuals and other Regulations order or direction having the force of law made expressly applicable to members of the said Force.

While both the plaintiffs were attached to the Gambling Suppression Branch of the C.I.D., one of their duties was to conduct raids on premises where, it was suspected, that gambling activities were taking place.

On March 5, 1977 the first plaintiff was detailed to conduct a number of such raids and for this purpose he was armed with the necessary search warrants. On that day he took with him the second plaintiff to assist him on these raids. One of the premises to be raided on that morning was No. 46B Holy Innocents Lane, Singapore. They were driven to this place in a police van. They arrived at the premises at 11.30 a.m.

The premises in question was occupied by Madam Chia who lived there with her son Lee Boon Keng and his family.

During the raid betting slips were found on the premises. Chia Yak Moy, an adopted son of Madam Chia, was arrested and taken to Paya Lebar Police Station. The next day he was produced in the Magistrate's Court where he pleaded guilty to a charge of being in possession of betting slips and was fined $60.

Matters rested there until the first plaintiff was informed by letter dated January 13, 1978 addressed to him from the Permanent Secretary (Home Affairs) that disciplinary proceedings under Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970 (the Regulations) had been commenced against him on two charges therein. The relevant and material portions of that letter is as follows: —

"I am directed by the Public Service Commission to inform you that the Commissioner of Police, acting under section 28A of the Police Force Act (Cap. 78) has referred to the Public Service Commission a case where disciplinary proceedings are to be taken against you. The same are hereby commenced against you under Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970, on the following charge:—

You, WONG KIM SANG, Detective Sergeant 876 attached to the Gambling Suppression Branch, Criminal Investigation Department, Singapore Police Force

are charged:

(1) That you, on or about the 5th day of March 1977 at about 11.30 a.m. at No. 46B Holy Innocents Lane, Singapore, did demand and accept or connived with Ling Hing Hoo. DPC872 in demanding and accepting a gratification of $1,200 from a member of the public, one Chia Yak Moy, as an inducement for not taking action against one Lee Boon Keng under the Common Gaming Houses Act (Cap. 96).

(2) That you, on or about the 5th day of March, 1977, at about 11.30 a.m. at No. 46B Holy Innocents Lane, Singapore, did pervent the proper administration of justice by putting one Chia Yak Moy under arrest and subsequently charging him for an offence under the Common Gaming Houses Act when you knew that the real culprit was one Lee Boon Keng.

2. xxx xxx xxx

3. In accordance with paragraph (2) of Regulation 4 of the said Regulations, you are requested to state in writing on or before the expiry of seven working days from the date of receipt of this letter any representations you may wish to make to exculpate yourself from the charge referred to above.

4. For your information, upon conclusion of the disciplinary proceedings and in accordance with the merits of the case, the Public Service Commission is authorised by sub-section (2) of section 28A of the Police Force Act to impose upon you any of the punishments prescribed in section 27 or 28 of the Act, whichever is appropriate; the Commission may also require your dismissal or retirement from the Police Force as it deems appropriate.

5. Please acknowledge receipt of the original of this letter on the duplicate copy attached which should be returned to me without delay."

The second plaintiff too received a similar letter dated January 13, 1978 almost on identical terms informing that disciplinary proceedings had also been commenced against him on the corresponding two charges and that letter is at pages B4-5 of the Agreed Bundle of documents.

In response to paragraph 3 of the said letter each of plaintiffs submitted their exculpatory statement by letters dated January 19, 1978 wherein each of them denied the two charges preferred against each of them.

These letters are exhibited as the documents B7 and 8 of the Agreed Bundle.

The Public Service Commission (the PSC) were not satisfied with these exculpatory statements of the two plaintiffs and they therefore appointed a Committee of Inquiry (the Committee) under Regulation 4(3) of the Regulations.

The Chairman of the Committee wrote to the first plaintiff on February 16, 1978 informing him about the appointment of the Committee by the PSC under Regulation 4(3) of the Regulations and that the Committee will commence its inquiry into his case and I quote in full this letter.

"Mr. Wong Kim Sang
Detective Sergeant 876
Gambling Suppression Branch
Criminal Investigation Department
Singapore Police Force
Ministry of Home Affairs
Republic of Singapore.

Through Commissioner of Police

Dear Sir,

I refer to the letter MHA 0248/72 Pt A(76) dated January 13, 1978 from the Permanent Secretary (Home Affairs) informing you that your dismissal from the service under Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970 is contemplated and your letter of January 19, 1978.

2. I am to inform you that the Public Service Commission has appointed a Committee of Inquiry under Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970, to inquire into the disciplnary charges made against you. The Committee of Inquiry comprises:—

Chairman	Mr. Chia Kee Koon Administrative Assistant Ministry of Home Affairs.
Member	Mr. Henry W. T. Chan Geotechnique Pte. Ltd. 14, Third Chin Bee Road, Singapore 22.
Member	Mr. Yeo Cheng Kim Executive Officer Immigration Department.

The Committee will commence inquiry into your case shortly and you will be informed of the venue, date and time of the inquiry in due course.

3. Under Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970, you are permitted:

a. to be represented by an Advocate and Solicitor or by another public officer who need not be a confirmed officer and who shall not be senior in rank to a member of the Committee or to the officer nominated by the Permanent Secretary (Home Affairs) to present the evidence on behalf of the Government;

b. to cross-examine the witness;

c. to give evidence on your own behalf; and

d. to have such witnesses as you may wish to call on your behalf.

4. Please inform me not later than 14 days from the date of receipt of this letter:

a. whether you wish to be represented at the inquiry and if so, the name of the Advocate and Solicitor or the name and rank of the public officer who will represent you in order to ensure that your representative will not be disqualified; and

b. the names, occupations and addresses of any witnesses that you may wish to call to testify or produce evidence before the Committee. You are to make your own arrangements for your witnesses to be present at the Inquiry.

5. If you wish to tender any documentary evidence, you are required to provide me with four copies of each of the documents at a reasonable time before such documents may be used as evidence.

6. Please acknowledge receipt of this letter on the duplicate copy attached which should be returned to me immediately.

Yours faithfully,

Sgd. CHIA KEE KOON
Chairman,
Committee of Inquiry"

A similar letter almost in identical terms was also written by the Chairman of the Committee to the second plaintiff on the same date.

Eventually the Committee held its inquiry into the two charges against each of the two plaintiffs respectively, in the presence of the two plaintiffs and their legal adviser (one legal adviser represented both the plaintiffs) on April 24, April 27, 1978, May 5 and May 9 when it concluded its inquiry.

During this inquiry after all the evidence had been led by the State Counsel representing the Attorney-General on the two charges against the two plaintiffs respectively, the two plaintiffs gave their evidence before the Committee in their defence on the two charges. At the end of the inquiry, the Chairman of the Committee invited the plaintiffs if they had anything to say in mitigation of punishment if they should be found guilty on both or any of the charges by the PSC. The Chairman of the Committee indicated that whatever they said would be taken down and submitted to the PSC for their consideration.

The counsel representing both the plaintiffs then made a plea in mitigation on behalf of the plaintiffs and this appears in pages A132 and 133 of the record of the proceedings of the Committee.

The first plaintiff was informed by letter dated August 15, 1978 from the Permanent Secretary (Home Affairs) that the PSC after careful consideration of the facts of the case and the report of the Committee had decided that he be dismissed and he was thereby dismissed from the service with effect from the date following the receipt of the letter by him. A copy of this letter is the document B16 of the Agreed Bundle and was received by the first plaintiff on August 18, 1978. A similar letter was also addressed to the second plaintiff in almost identical terms and was similarly received by the second plaintiff on August 18, 1978. A copy of that letter is the document B17 of the Agreed Bundle.

As the two letters of August 15, 1978 addressed to the two plaintiffs did not mention on which of the two charges that had been preferred against them that they had each been found guilty, counsel for the plaintiffs wrote to the Permanent Secretary (Home Affairs) on September 5, 1978 for clarification on this point. The Permanent Secretary (Home Affairs) by letter of September 15, 1978 informed their counsel that they were found guilty of the first charge.

The report of the Committee is at pages 1-5 of the Agreed Bundle marked A.

It will be observed that the Committee in their report stated both the charges against the two plaintiffs had not been proved.

The record of the proceedings before the Committee during its four days of hearing is contained in pages A24 to A133 of the Agreed Bundle A. These pages not only contain the information given before the Committee and the defences of both the plaintiffs but also the submissions by counsel before the Committee on the case against both the plaintiffs on the charges.

These are the facts that gave rise to this action.

For easy reference I attach a schedule to this judgment containing copies of the relevant statutory provisions referred to mainly in this case.

The basic question for consideration is, have the plaintiffs been validly dismissed from the service? In their statement of claim the plaintiffs alleged and Mr. Jeyaretnam, the plaintiffs' counsel, submitted that the purported dismissal of the two plaintiffs by the PSC was illegal and void on the following grounds: —

(1) The PSC had acted wrongly when they found them guilty on the first of the two charges that were preferred respectively against each of these plaintiffs.

(2) The PSC had disregarded the rights of the plaintiffs under Article 135(2) of the Malaysian Constitution and had acted in violation of those rights.

(3) The PSC in their letters to the plaintiffs informing them that they had been dismissed from the service failed to inform them on which of the two charges that were preferred against them they had been found guilty in the case of each of the plaintiffs.

On the first ground counsel for the plaintiffs made his submission under two heads. His first head is that the PSC has no powers to differ from the findings of the Committee which had found them not guilty on both the charges that had been preferred against each of the plaintiffs. It is his submission that the Commissioner of Police when he elected to act under section 28A of the Act and referred the case of the two plaintiffs, where disciplinary proceedings had to be taken to the PSC, for such case to be dealt with by the PSC, was in fact delegating his powers under section 27 of the Act. The PSC must therefore act in this matter within the provisions of section 27 of the Act. That section sets out the various offences under the Act and the regulations and orders made thereunder for which subordinate police officers, like the plaintiffs, are liable to be charged under the Act, how they are to be dealt with for such offences and what punishment can be meted out to them when found guilty of such offences.

It is his submission that under section 27 of the Act, before a subordinate police officer could be punished for an offence under this section he must first be found guilty of such offence by a Commanding Officer or any other police officer authorised by him to conduct the disciplinary proceedings. Now these disciplinary proceedings that are envisaged under this section are governed by Police Regulations made under the Act and particularly the Police Regulations relating to discipline and punishments which appear in Part III of the Police Regulations. The relevant Police Regulations appear in the Schedule. It will be observed that where an authorised officer is appointed by the Commanding Officer to hold an inquiry under this section on a charge against a subordinate officer, he must first find him guilty of the charge or otherwise. If he finds him guilty he may proceed to impose such punishments as are provided by that section. However the two more severe punishments under this section which are dismissal or retirement from the service cannot be imposed by him but he must submit his finding of guilty on the charge to the Commanding Officer to impose the punishment. It will further be observed that under Police Regulation 10 a Commanding Officer may order a re-hearing of any disciplinary proceedings against a subordinate officer if he is of the opinion that an inadequate sentence or excessive sentence has been imposed or if the proceedings had not been conducted in a proper manner. It is not open to him to vary the findings of the authorised officer on the charges. It is Mr. Jeyaretnam's submission that in the instant case here as the PSC had appointed the Committee and as the Committee had found the plaintiffs not guilty of both the charges preferred against them, respectively, the PSC like a Commanding Officer under section 27 of the Act had no powers to differ from the findings of not guilty on both the charges by the Committee appointed by them and substitute its own finding of guilty on the first charge in respect of each of the plaintiffs and thereafter proceed to punish them for that offence by dismissing them from the service. He submits that

that would not be consonant with the scheme of things under section 27 of the Act. So when the PSC acts under the powers given under section 28A of the Act they must conform with this scheme and accept the findings of the Committee or order a retrial. It is not open to the PSC to vary the findings of the Committee just as it is not open to the Commanding Officer to vary the findings of the authorised officer under such circumstances. I do not accept this submission. In the first place when it is necessary to take disciplinary proceedings against a subordinate police officer action may be taken against him under the provisions of section 27 of the Act and the Police Regulations made thereunder, particularly those Police Regulations concerning discipline and punishment or alternatively, the Commissioner of Police may in a case where he thinks fit to act under section 28A(1) of the Act refer the matter to the PSC for such a case to be dealt with by the PSC "in accordance with the regulations governing disciplinary proceedings in the public service". This would mean that when the PSC is asked to take over a disciplinary case against a subordinate police officer the PSC would conduct those disciplinary proceedings and the procedure governing those proceedings is clearly spelt out as under its own regulations governing disciplinary proceedings in the public service and not the Police Regulations under section 27 of the Act as submitted by Mr. Jeyaretnam. However, it will be observed that subsection (2) of section 28A of the Act limits the powers of the PSC in that the punishment that it can mete out to a subordinate police officer are only those referred to under section 27 of the Act.

Now, Regulations Nos. 3 and 4 of these Regulations refer to the procedure to be adopted in the case of disciplinary proceedings that are to be taken against the plaintiffs here. It will be observed the PSC having considered what was alleged against the plaintiffs and the exculpatory statements made by them on the charges preferred against them decided in accordance with Regulation 4(3) of the Regulations to appoint a Committee of Inquiry to inquire into the matter and to submit its report to the PSC. Regulation 4(7) of the Regulations provides that the record of the proceedings of the Committee shall consist of information obtained by the Committee and a report by the Committee and Regulation 4(13) of the Regulations further provides that the Committee shall within 14 days of the conclusion of the proceedings submit its report to the PSC. Regulation 4(14) of the Regulations further provides that the PSC may upon considering the report of the Committee if it is of the opinion that the police officer should be dismissed from the service or reduced in rank may dismiss or reduce the rank of the officer or may impose some other punishment other than the dismissal or reduction in rank. This clearly shows that the Committee appointed under the Regulations is only for collecting the information and reporting on the case. Its function, it would appear, is not to make any finding as to whether the officer is guilty or not guilty on the charge. That is a matter left entirely to the PSC after considering the report of the Committee. If the Committee in its report makes any finding as to the guilt or otherwise on the charge preferred against the subordinate officer concerned it is purely expressing its opinion and no more, and it is at best a matter which may be taken into consideration by the PSC and is by no means binding on the PSC. In this respect the functions of the Committee under the Regulations are different from those of authorised officer appointed by the Commanding Officer under section 27 of the Act to conduct disciplinary proceedings under that section and in accordance with Police Regulations governing those proceedings. The authorised officer is required to find him guilty on the charge before he can impose any punishment and it is clear that it is the function of the authorised officer to find whether the officer charged is guilty of the offence or not, and under Regulation 10 of the Police Regulations, the Commanding Officer who appointed the authorised officer cannot vary those findings but can confirm them or, if he differs from them, order a retrial.

Any apparent greater safeguards provided under the procedure for disciplinary proceedings under section 27 of the Act as compared to the procedure under section 28A of the Act is understandable as the very standing of the PSC which is entrusted with handling these disciplinary proceedings there affords sufficient safeguards to those who have to be dealt by that body.

In all these circumstances I find there are no merits whatever in plaintiffs' counsel's submission under this head. The PSC were perfectly entitled to differ from the views of the Committee on the question of whether the officers concerned were guilty on the charge or not. In the instant case here, having considered the report which includes the whole of the records of the proceedings including the information obtained by the Committee, and its report to the PSC, the PSC acting within its powers, found that that the first charge in respect of each of the plaintiffs had been proved and proceeded to impose the punishment which was within its powers to do and they accordingly dismissed them from the service.

Under the second head of the first ground Mr. Jeyaretnam submits that there was no evidence or no sufficient evidence before the PSC for it to have arrived at that conclusion that both the plaintiffs were guilty on the first charge that was preferred against each of them. Mr. Jeyaretnam went on to say that there was no basis on that evidence before the PSC on the first charge against both the plaintiffs to support a finding of guilty on the charge and no reasonable person would have come to the conclusion and therefore the PSC had acted arbitrarily and capriciously. Mr. Jeyaretnam further submits that the High Court in its exercise of its supervisory jurisdiction over domestic or inferior tribunals exercising quasi judicial functions as the PSC was doing here should interfere in this case and put right its decision.

The learned Chief Justice in the case of *V.C. Jacob* v. *The Attorney-General,*[1] in delivering the judgment of the Court of Appeal while dealing with a similar ground in that case had considered and clearly set out the nature and extent of the supervisory functions of the High Court over inferior tribunals. He said that the law here is the same as in England and it had been repeatedly said "that the High Court in the exercise of its supervisory juris-

diction over inferior tribunals will not interfere merely on the ground of insufficiency of evidence". The jurisdiction over inferior tribunals is supervision and not review. Its supervision would be to ensure that the inferior tribunal acts within the jurisdiction permitted by Parliament in its mandate to the tribunal. If the tribunal on a true construction of the Act is to inquire into and finally decide questions within a certain area, this court's supervisory function is to see that it makes the authorised inquiry according to natural justice and arrives at a decision whether right or wrong. The duty of the court is twofold:

(1) to see that the tribunal makes the right inquiry or question within its permitted area and not outside that area and,

(2) that it acts according to natural justice in that the answer that it gives to a right inquiry or question though it may be wrong is still an answer that lies within its jurisdiction. In other words it is an answer that is open to a reasonable person to make.

In the particular case here Mr. Jeyaretnam has submitted that there is no evidence that a demand for money was made by either of the plaintiffs or that a payment was made by Chia to one of the plaintiffs. It was submitted that the witness, Lee Boon Keng, was an untruthful witness and his credit had been impeached by the counsel for the Attorney-General and his whole testimony should be disregarded. On that basis there was no sufficient evidence to support this charge.

I have carefully examined the records here and if Lee Boon Keng's evidence is totally disregarded I can't still say it was not open to the PSC on the rest of the evidence placed before them to find both the plaintiffs guilty on the charge.

That being so I find no merit in Mr. Jeyaretnam's submission under this head of ground 1.

Under the second ground Mr. Jeyaretnam's submission is that having regard to the facts of this case the PSC has acted disregarding the rights of the plaintiffs under Article 135(2) of the Malaysian Constitution which reads as follows for purposes of this case: —

"Article 135(2) No member of the police force shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard."

In the pleadings the plaintiffs have not specifically raised this ground and so when this was pointed out by me Mr. Jeyaretnam applied to amend their statement of claim to incorporate this ground. Mr. Chao the State Counsel had no objection to such an application but replied that he should be given leave to make consequential amendments to his defence. In the event I indicated that I would treat that the pleadings had been amended to incorporate this ground as an issue between the parties.

This ground was also raised in *Jacob's* case to which I have already referred. The learned Chief Justice in the judgment of the Court of Appeal then clearly defined the rights of the plaintiffs under Article 135(2) of the Malaysian Constitution as a right that the plaintiffs be given an opportunity to be heard on the question of dismissal as a punishment and no more. Once the plaintiff is made aware that he may be dismissed from the service if the charge against him is proved he should be given an opportunity to be heard on this point.

On the facts in that case the learned Chief Justice held that such an opportunity had been given to the appellant there. In our case the facts here are much stronger in favour of the defendant. The plaintiffs were more than made aware that they may be dismissed from the service if any of the charges were proved against them and they were at the end of the inquiry before the Committee invited by its Chairman if they wished to say anything in mitigation of punishment and their counsel did in fact make a plea of mitigation on behalf of both the plaintiffs which is in the records.

I find that there was clear and adequate compliance with the provisions of that article of the Malaysian Constitution and this complaint of the plaintiffs is not well founded.

Mr. Jeyaretnam seeks to distinguish *Jacob's* case from the instant case on two points.

First, he submits that the mere fact that the PSC chose to act under Regulation 4(4) and not Regulation 4(3) of the Regulations by itself is not indicative that the PSC contemplated dismissal of the plaintiffs from the service as one of the likely punishments if any of the charges were proved against them. It is his submission that the PSC had to act under Regulation 4(4) of the Regulations and not Regulation 4(3) as the plaintiffs being subordinate police officers could not be punished under section 27 of the Act unless found guilty on a charge as laid down in the procedure in that section. I have already held earlier that the PSC here are not bound by the procedure set out in section 27 of the Act and the Police Regulations but by the procedure laid out in the Regulations here.

His second point is, as the Committee had found that both charges against the plaintiffs had not been proved and as the PSC chose to vary the finding of the Committee on the first charge and substitute its finding of guilty on the first charge in respect of both the plaintiffs and then proceeded to dismiss them from the service the PSC in such circumstances should have given the plaintiffs an opportunity to be heard on punishment before the PSC proceeded to dismiss the plaintiffs from the service. Here again as I have indicated earlier the Committee's finding that the charges have not been proved was in fact no finding at all by the Committee but merely an expression of their opinion in its report to the PSC. That being so I see no merits on this submission as well.

Mr. Chao on this ground of complaint had submitted that if Article 135(2) of the Malaysian Constitution was applicable to the plaintiffs then its provisions had been fully complied with in this case. He however went on to submit that the said Article of

the Malaysian Constitution had impliedly been repealed and was no longer available to the plaintiffs here.

Article 135(2) of the Malaysian Constitution applied to Singapore when we were in Malaysia. It continued to be applicable to Singapore even when we ceased to be part of Malaysia by virtue of the Republic of Singapore Independence Act, 1965 (No. 5 of 1965). However, by the Constitution (Amendment) Act 1970 (No. 13 of 1970) the whole of Part IV of the Constitution of Singapore relating to "Public Service" was changed. A provision corresponding to Article 135(2) was provided in Article 78(3) of the Constitution of Singapore. This provision for purposes of this case reads as follows:—

"No police officer of the rank of Inspector and above shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard."

It will be observed that while Article 135(2) of the Malaysian Constitution applied to all members of the Police Force the new Article 78(3) provided by the Constitution (Amendment) Act 1970 was applicable only to police officers of the rank of Inspector and above. The clear implication is that this provision is no longer applicable to police officers below the rank of Inspector in Singapore. So I accept Mr. Chao's submission on this point and find this provision of Article 135(2) has been repealed impliedly and such a provision is no longer applicable to subordinate police officers like the plaintiffs.

The incident that eventually led to the dismisal of the plaintiffs and this action all took place long after Article 135(2) of the Malaysian Constitution has been impliedly repealed by the Constitution (Amendment) Act of 1970. Even in such circumstances Mr. Jeyaretnam submits that the said Article continues to apply to the plaintiffs as they were subordinate police officers before its repeal and therefore they acquired a vested right under that Article of the Malaysian Constitution. I have not been referred to any authority to support this contention. I do not accept this submission of Mr. Jeyaretnam.

In respect of the third ground of complaint raised by the plaintiffs here Mr. Chao for the defendant has submitted that there is no statutory requirement that they should be furnished with this information as on which of two charges or on both of them that the plaintiffs had been found guilty before they were dismissed from the service.

I accept this submission of the defence. In any event, as the plaintiffs were furnished with this information as soon as they wrote in for this information, no serious mischief has been done to the plaintiffs. The plaintiffs have not been seriously prejudiced in any way by this omission in the first instance.

For these reasons this action of the plaintiffs is dismissed with costs.

Action dismissed.

Solicitors: *J.B. Jeyaretnam & Co.*

SCHEDULE

POLICE FORCE ACT

(Cap. 78)

27.—(1) Where a subordinate officer is found guilty by a commanding officer or any other officer authorized by him to conduct disciplinary proceedings, of any of the following offences:—

(a) absence from duty without leave or good cause;
(b) sleeping on duty;
(c) conduct to the prejudice of good order and discipline;
(d) cowardice in the performance of duty;
(e) disobedience of Police Regulations, Police General Orders, Force Orders, Standing Orders or any orders of a superior officer whether written or verbal;
(f) being unfit for duty through intoxication;
(g) insubordination;
(h) neglect of duty or orders;
(i) malingering;
(j) making in the course of his duty a statement which is false in a material particular;
(k) excess of duty resulting in loss or injury to any other person;
(l) wilful destruction or negligent loss of or injury to property belonging to the Government;
(m) engaging in trade or other employment without the permission of the Commissioner,

a commanding officer may order that such subordinate officer be dismissed or retired from the Police Force or may punish him with any of the following punishments:—

(n) reduction in rank, grade or seniority;
(o) deferment or stoppage of increment;
(p) reprimand;
(q) caution;
(r) extra duty,

and in lieu of or in addition to any of the aforesaid punishments, may impose a fine not exceeding one hundred dollars or forfeiture of not more than one month's pay, except in the case of absence without leave or good cause when, in addition to any other punishment, forfeiture of pay may be imposed in respect of the period of absence or such lesser period as to the commanding officer may seem fit.

(2) Where any officer authorized by a commanding officer to conduct disciplinary proceedings finds any subordinate officer guilty of any of the offences specified in subsection (1) of this section, he may impose on such subordinate officer any of the punishments which a commanding officer may impose other than that of dismissal or retirement from the Police Force.

(3) A subordinate officer may appeal against any finding or punishment under this section to the Commissioner within thirty days from the date of such finding or punishment and in every case where an appeal has been lodged any punishment awarded shall be suspended pending the determination of the appeal.

(4) Where a subordinate officer is ordered to be retired under the provisions of subsection (1) of this section his service shall, for the purposes of the Pensions Act, be deemed to have been terminated on the ground referred to in section 8 of that Act.

28.—(1) Where an inspector is found guilty by a commanding officer or any officer authorised by Police Regulations to conduct disciplinary proceedings of any of the offences specified in subsection (1) of section 27 of this Act, the Commissioner may order that such inspector be dismissed or retired from the Police Force or may punish him with any of the following punishments:—

(a) reduction in rank or seniority;
(b) deferment or stoppage of increment;
(c) reprimand;
(d) caution,

and in lieu of or in addition to any of those punishments may impose a fine not exceeding two hundred dollars and in

the case of absence without leave or good cause may order forfeiture of pay for the period of absence or such lesser period as the Commissioner thinks fit.

(2) An inspector who is aggrieved by a decision of the Commissioner in respect of his dismissal, retirement or reduction in rank may, within thirty days of his being notified of such decision, make application to the Public Service Commission to review the decision of the Commissioner and in every case where an application for review has been made any punishment awarded by the Commissioner shall be suspended pending the determination of the application.

(3) The Public Service Commission may determine an application for review under subsection (2) of this section in such manner as it thinks fit and may confirm, set aside or vary the decision of the Commissioner.

(4) Where an inspector is ordered to be retired under this section his service shall, for the purposes of the Pension Act, be deemed to have been terminated on the ground referred to in section 8 of that Act.

28A.—(1) Notwithstanding the provisions of sections 27 and 28 of this Act and of the Police Regulations, the Commissioner may, if he thinks fit, refer any case where disciplinary proceedings are to be taken against a subordinate officer or an inspector to the Public Service Commission for such case to be dealt with by the Public Service Commission in accordance with the regulatons governing disciplinary proceedings in the public service.

(2) Where any case has been referred to the Public Service Commission under subsection (1) of this section the Commission may order that the subordinate officer or inspector, as the case may be, be dismissed or retired from the Police Force or may punish him with any of the punishments referred to in sections 27 and 28 of this Act.

THE POLICE REGULATIONS, 1959

PART III

DISCIPLINE AND PUNISHMENTS

7.—(1) When a subordinate officer has been charged, disciplinary proceedings shall be conducted by an officer authorised in that behalf without undue delay.

7.—(4) If the officer concerned pleads guilty, the officer conducting the proceedings may accept the plea and record a conviction against him and impose on such officer such punishment as he is empowered by the Ordinance to impose, save that where he considers that the officer should be dismissed or retired from the Police Force, he shall forward the record of the proceedings with his recommendations to his commanding officer for sentence.

7.—(8) If the officer conducting the proceedings makes a finding of guilt, he shall record a conviction against the officer concerned and impose on such officer such punishment as he is empowered by the Ordinance to impose, save that where he considers that the officer should be dismissed or retired from the Police Force, he shall forward the record of the proceedings with his recommendations to his commanding officer for sentence.

7.—(10) A commanding officer may order a rehearing of any disciplinary proceedings against a subordinate officer if he is of the opinion that an inadequate sentence or excessive sentence has been imposed or if the proceedings have not been conducted in a proper manner.

The Public Service (Disciplinary Proceedings) Regulations, 1970.

1. xxx

2. xxx

3.—(1) If it is represented ot the Public Service Commission by a Permanent Secretary that a public officer has been guilty of misconduct or neglect of duty and the Public Service Commission is of the opinion that the subject of the complaint is not serious enough to warrant proceedings under regulation 4 of these Regulations with a view to dismissal or reduction in rank, the Public Service Commission may cause an investigation to be made into the matter in such manner as it thinks fit, and the public officer shall be informed in writing of the case against him and shall have a reasonable opportunity of replying thereto.

2. xxx

(a) xxx

(b) the results of such investigation disclose grounds for so doing require the public officer to retire in the public interest without further proceedings under these Regulations, with or without a reduction in retirement benefits:

Provided that the public officer shall be given an opportunity to submit a reply to the grounds upon which his retirement is contemplated.

4.—(1) If it is represented to the Public Service Commission by a Permanent Secretary that a public officer has been guilty of misconduct or neglect of duty and the Public Service Commission is of the opinion that the subject of the complaint warrants proceedings with a view to dismissal or reduction in rank, the Public Service Commission may cause proceedings to be taken under the provisions of this regulation.

(2) The public officer shall be notified in writing by his Permanent Secretary of the grounds, which shall be reduced to the form of a definite charge or charges, upon which it is intended to dismiss him or to reduce his rank and he shall be given not less than seven working days within which to exculpate himself in writing. The officer shall also be informed in writing of any other circumstances which it is proposed to take into consideration.

(3) If the public officer submits an exculpatory statement which is not satisfactory, the Public Service Commission shall appoint a Committee (hereinafter in these Regulations referred to as "the Committee") to inquire into the matter and to submit a report to the Public Service Commission.

(4) The Committee in the performance of its functions shall not be deemed to be a judicial or quasi-judicial body.

(5) xxx

(6) xxx

(7) The record of the proceedings of the Committee shall consist of the information obtained by the Committee and a report by the Committee. The information shall not ordinarily be set out in the form of question and answer but in the form of a narrative but the Committee may in its discretion record any particular question and answer.

(8) xxx

(9) xxx

(10) xxx

(11) xxx

(12) xxx

(13) xxx

(14) The Public Service Commission may, upon considering the report of the Committee, if it is of the opinion —

(a) that the public officer should be dismissed or be reduced in rank, dismiss or reduce the rank of the public officer from such date as it may think fit; or

(b) xxx

(15) The Public Service Commission may where it thinks fit require the Committee to reconvene to consider further evidence and to meet for that purpose:

Provided that the public officer shall be given not less than fourteen days' notice of such further meeting of the Committee.